

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHILDREN'S SERVICES AGENCY

DIVISION OF CHILD WELFARE LICENSING

EMERGENCY RULES

**CERTIFICATE OF NEED FOR EXTENSION OF EMERGENCY RULES**

On May 1, 2020, a young man tragically died due to the improper use of a physical restraint at Lakeside for Children facility, a child caring institution (CCI) licensed by the Department of Health and Human Services (Department). In response to this tragedy, the Department initiated a comprehensive review of the current statutes, administrative rules, and policies regarding restraint in CCIs. The Department also consulted with national experts at the Annie E. Casey Foundation, Casey Family Program, and the Building Bridges Initiative to adopt a framework for care and treatment of youth in child caring institutions that incorporates national best practice standards.

The Department, together with stakeholders and partners from the various private and public child caring institutions statewide, have been meeting weekly since July 2020 on changes to the current philosophies and taking action on solutions to improve safety for children in Michigan's licensed child caring institutions. One of the work groups is addressing the new language for restraints and seclusion in the administrative rules for child caring institutions. While the rules are almost complete and ready for submission to the Administrative Rules Division-LARA, the actual rule process will take months to complete and this extension is required to ensure the current limitations on restraint and seclusion remain in place until final rules are promulgated.

Pursuant to Section 48(1) of 1969 PA 306, as amended, MCL 24.248(1), I hereby certify that it is necessary to extend the effectiveness of the Children's Service Agency, Division of Child Welfare Division emergency rules, Child Caring Institutions, which were filed with the Secretary of State on July 16, 2020, for an additional 6 months. Therefore, the Child Caring Institutions Emergency Rules shall remain effective until July 16, 2021.



December 22, 2020

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Gretchen Whitmer, Governor

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Date

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**CHILDREN'S SERVICES AGENCY**

**DIVISION OF CHILD WELFARE LICENSING**

**PROHIBITION OF PRONE RESTRAINT; PROCEDURES INVOLVING OTHER  
RESTRAINTS IN CHILD CARING INSTITUTIONS**

**EMERGENCY RULES**

Filed with the Secretary of State July 16, 2020

These rules take effect upon filing with the Secretary of State and shall remain in effect for 6 months.

(By authority conferred on the director of the department of health and human services by sections 2, 5, 10, and 14 of 1973 PA 116, MCL 722.112, 722.115, 722.120, 722.124; Executive Reorganization Order No. 2015-1, MCL 400.227; and section 48 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248.)

**FINDING OF EMERGENCY**

1973 PA 116, MCL 722.111 to 722.128, known as the child care organizations act, (Act) provides for the protection of children through the licensing and regulation of child care organizations and for the establishment of standards for child care in the form of administrative rules. The Department is empowered to exercise authority and promulgate rules to carry out the mandates of the Act, and to safeguard the public health. MCL 333.2226(d).

A child caring institution (CCI) is one type of child care organization covered in the Act. CCIs are defined in section 1(c) of the Act, MCL 722.111, as follows:

"Child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, that is described as a small child caring institution, owned, leased, or rented by a licensed agency providing care for more than 4 but less than 13 minor children. Child caring institution also includes an institution for developmentally disabled or emotionally disturbed minor children. Child caring institution does not include a hospital, nursing home, or home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school licensed under section 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a hospital or facility operated

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by the state or licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a child has been placed under section 5(6).

On May 1, 2020, a young man tragically died due to the improper use of a physical restraint at Lakeside for Children facility, a CCI licensed by the Department of Health and Human Services (Department). In response to this tragedy, the Department initiated a robust review of the current statutes, administrative rules, and policies regarding restraint in CCIs. The Department also consulted with national experts at the Annie E. Casey Foundation, Casey Family Programs and the Building Bridges Initiative (Casey) to review the current restraint framework.

Based on this review, the Department concluded that current administrative rule, Michigan Administrative Code R 400.4159, does not sufficiently protect against dangerous restraints. In addition, the current rule lacks reporting requirements the Department needs to track the use of restraints, monitor CCI performance, and provide oversight against dangerous practices. A rule providing for such tracking, monitoring, and oversight is necessary to prevent further harm or death due to improper use of restraints.

These rules will prohibit the use of a particularly dangerous form of restraint, limit the duration of restraints, limit the circumstances when restraints can be used, and require timely notification to the Department when any restraint is used to prevent immediate or imminent injury to the individual or to others. Following the normal rulemaking process under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, (APA) would result in ongoing use of this dangerous form of restraint while rules are promulgated, and would forego critical data collection and reporting that is needed to understand the extent of the problem and timely intervene to prevent danger.

In light of the foregoing, I find that emergency rules are necessary to safeguard the public health, welfare, and safety, because any delay will result in ongoing use of dangerous restraints without appropriate oversight. Under section 48(1) of the APA, 1969 PA 306, MCL 24.248(1), the Department may promulgate rules without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242, under these circumstances. In addition, the Department finds these emergency rules are necessary to help prevent any harm that might occur to children in child caring institutions during the period of time to complete the notice and participation procedures in promulgating permanent rules.

#### Prohibition of Prone Restraint; Procedures Involving Other Restraints in Child Caring Institutions

Rule 1. (1) A child caring institution (CCI) must establish and follow written policies and procedures regarding restraint. These policies and procedures shall be available to all residents, their families, and referring agencies.

(2) Resident restraint must be performed in a manner that is safe, appropriate, and proportionate to the severity of the minor child's behavior, chronological and developmental age, size, gender,

physical condition, medical condition, psychiatric condition, and personal history, including any history of trauma, and done in a manner consistent with the resident's treatment plan.

(3) Mechanical restraints must not be used on pregnant youth, including youth who are in labor, delivery, and post-partum recovery, unless credible, reasonable grounds exist to believe the youth presents an immediate and serious threat of hurting self, staff, or others.

(4) The following restraints are prohibited for use on pregnant youth unless reasonable grounds exist to believe the youth presents an immediate and credible risk of escape that cannot be reasonably minimized through any other method:

- (a) Abdominal restraints.
- (b) Leg and ankle restraints.
- (c) Wrist restraints behind the back.
- (d) Four-point restraints.

Rule 2. The written policy must include all of the following:

(a) Procedures for a debriefing of the restraint among the staff involved and supervisors immediately following the end of the restraint that examines preventive strategies that could have been used to avoid the restraint.

(b) Procedures to debrief with the youth restrained that includes the examination from the youth's perspective of preventive strategies that could have been used to help support the youth to avoid behavior or that would have helped the youth de-escalate from behaviors that placed the youth or others at risk of injury.

(c) Procedures for recording restraints as an incident report. The incident report must include the reason for the restraint, the type of restraint used and its duration, names of all staff involved with the restraint and their roles and a description of all less restrictive interventions utilized prior to the initiation of the restraint.

(d) Procedures to submit the incident report regarding all restraints within 12 hours to the parent or legal guardian in writing and in writing to the Michigan Department of Health and Human Services within 24 hours, as well as the review and aggregation of incident reports regarding restraints at least biannually by the CCI's director or designee.

(e) Procedures for a comprehensive review of the incident within 24 hours following the use of a restraint. Such comprehensive review may need to occur multiple times over multiple days to support the youth involved or any youth that witnesses the restraint. Family members should be invited to participate in the review.

(f) Procedures for the provision of sufficient and adequate training for all staff members of the CCI who may use or order the use of restraint using the CCI's written procedures.

Rule 3. (1) The written policy must only permit the licensee to restrain a child after less restrictive techniques have been exhausted and the restraint is still necessary to either of the following:

- (a) To prevent serious injury to the child, self-injury, or injury to others.
- (b) As a precaution against escape where the youth may be at risk of injury to self or others.

(2) The written policy must prohibit, at a minimum, any of the following aversive punishment procedures:

- (a) The use of noxious substances.
- (b) The use of instruments causing temporary incapacitation.



- (c) Chemical restraint as that term is defined in section 2b of 1973 PA 116, MCL 722.112b.
- (d) Prone restraints or other restraint that may constrict a youth's breathing.
- (3) Restraint equipment and physical restraint techniques must not be used for punishment, discipline, or retaliation.
- (4) The use of a restraint chair is prohibited.

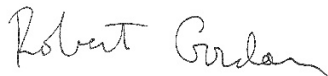
Rule 4. (1) Resident restraint must only be applied for the minimum time necessary to accomplish the purpose for its use as specifically permitted in Rule 1(2).

(2) The approval of the administrator or his or her designee must be obtained before any use of material or mechanical restraints. A staff member shall be present continuously while material or mechanical restraint equipment is being used on a resident, and the staff member shall remain in close enough proximity to the restraint to intervene immediately in case of emergency to protect the safety of the resident.

(3) A staff person shall document each use of material or mechanical restraint equipment in a written record and shall include all of the following information:

- (a) The name of the resident.
- (b) The name of the administrator or designee who authorized the use of the equipment, and the time of the authorization.
- (c) The time the restraint equipment was applied.
- (d) The name of the staff member who was responsible for the application.
- (e) A description of the specific behavior that necessitated its use.
- (f) The name of the staff person who was continuously with the resident.
- (g) The date and time of removal of the equipment and the name of the person removing the equipment.

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN  
SERVICES




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Robert Gordon, Director

Date: July 15, 2020

Pursuant to Section 48(1) of 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Health and Human Services that circumstances creating an emergency have occurred and the public interest requires the promulgation of the above rules.




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Gretchen Whitmer, Governor

Date: July 15, 2020

DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT  
ENVIRONMENTAL STEWARDSHIP DIVISION

**PANDEMIC PUBLIC HEALTH MEASURES IN MIGRANT AGRICULTURAL  
WORKER HOUSING  
EMERGENCY RULES**

Filed with the secretary of state on March 2, 2021

These rules take effect upon filing with the secretary of state and shall remain in effect for six months.

By authority conferred on the department of agriculture and rural development by section 12421 of the public health code, 1978 PA 368, MCL 333.12421, and Executive Reorganization Order No. 2017-3, MCL 333.26254.

These emergency rules are promulgated by the Michigan department of agriculture and rural development (MDARD) to respond to the COVID-19 pandemic, and to protect the health, safety, and welfare of migratory laborers and their families who occupy agricultural labor camps.

**FINDING OF EMERGENCY**

On March 10, 2020, the Michigan department of health and human services (MDHHS) identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, Governor Whitmer issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan.

To protect workers from COVID-19, Governor Whitmer issued numerous additional Executive Orders, including Executive Orders 2020-111 and 2020-137, focused specifically on protecting migrant and seasonal agricultural workers. These orders required those who provide housing for Michigan's migrant agricultural workers to implement plans to prevent exposure to the novel coronavirus that causes COVID-19, care for individuals with COVID-19, and prevent the spread of disease among their workers based on this directive. It was necessary to take proactive, preventive measures to create safer living conditions for migrant workers, and the department, working collaboratively with licensed camp operators, migrant and seasonal agricultural worker organizations, local health departments, and other state agencies worked throughout the growing season to implement these orders while they were in effect.

Additionally, on August 14, 2020, MDHHS Director Robert Gordon issued an Emergency Order under MCL 333.2253, titled Mandatory Testing, Preventative Measures, and Safe Housing for Agricultural Workers. This order, still in effect, requires a number of protective actions including testing.

The State of Michigan presently has a seven-day average of 84.8 cases per million people. Test positivity was 3.7% as of February 23, 2021. While metrics have recently decreased from all-time highs, the state remains over two and a half times higher than the mid-summer low, according to MDHHS. A high number of cases creates significant pressure on our emergency and hospital systems. An average of 102.4 daily hospital admissions was seen in Michigan in the last week, with individuals under the age of 60 accounting for 40% of all new admissions. There are fewer than 900 Michiganders currently hospitalized for COVID-19 and 4.1% of all available inpatient beds are occupied by patients who have COVID-19. The state death rate is 2.6 deaths per million people and there are approximately 185 weekly deaths in Michigan attributable to COVID-19.

Even where COVID-19 does not result in death, and where our emergency and hospital systems are not heavily burdened, the disease can cause great harm. Recent estimates suggest that one in ten persons who suffer from COVID-19 will experience long-term symptoms, referred to as “long COVID.” These symptoms, including fatigue, shortness of breath, joint pain, depression, and headache, can be disabling. They can last for months, and in some cases, arise unexpectedly in patients who had few or no symptoms of COVID-19 at the time of diagnosis. COVID-19 has also been shown to damage the heart and kidneys. Furthermore, minority groups in Michigan have experienced a higher proportion of “long COVID.” The best way to prevent these complications is to prevent transmission of COVID-19.

Part of the department’s duty under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, is to ensure that a camp and its proposed operation conforms or will conform to minimum standards of health. In addition, pursuant to section 12421 of the public health code, 1978 PA 368, MCL 333.12421, the department must “promulgate rules for the protection of the health, safety, and welfare of migratory laborers and their families who occupy agricultural labor camps,” including “necessary matters relating to their good health, safety, and welfare.” In light of the threat of COVID-19, camps must implement certain protocols to maintain such minimum standards of health.

COVID-19 can spread easily in settings where many people live in close proximity, such as the migrant housing camps that house thousands of migrant agricultural workers in Michigan each year. Migrant agricultural workers are an essential part of the workforce in Michigan, and securing their health and well-being helps ensure that Michigan’s food supply chain is not disrupted. Taking preventive measures will save lives and keep the state’s agricultural sector running smoothly and consistently. Those who provide housing for Michigan’s migrant agricultural workers must implement plans to help prevent exposure to the novel coronavirus that causes COVID-19, care for individuals with COVID-19, and help prevent the spread of disease among their workers. Proactive and preventive measures must be taken to create safer living conditions for migrant workers.

Following the standard notice-and-comment rulemaking would result in harm to the public health, welfare, and safety by preventing a timely response to this rapidly changing pandemic. Migrant workers will be arriving only weeks from now to begin preparations for planting, pruning, maintenance, and harvest of our earliest crops, including asparagus. It is imperative that

licensed housing providers have as much notice as possible about the requirements to have in place to protect workers during the 2021 season. To ensure that there is as much time as possible to have plans and procedures in place to protect migrant agricultural workers, it is necessary to promulgate emergency rules as provided for in section 48 of the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

### **Rule 1. Definitions.**

(1) Definitions used in part 124 of the public health code, 1978 PA 368, MCL 333.12401 to 333.12434, and the rules promulgated under that authority, R 325.3601 to R 325.3699, have the same meanings in these rules.

(2) As used in these rules:

(a) “COVID-19-suspected resident” includes a camp resident who has symptoms of COVID-19 (e.g., fever, cough, shortness of breath) but has not yet received a COVID-19 diagnostic or antigen test result.

(b) “COVID-19-confirmed resident” includes a camp resident who has received a positive result from a COVID-19 diagnostic or antigen test and has not subsequently discontinued transmission-based precautions based on a strategy outlined by the CDC. A description of the CDC recommendations for discontinuation of transmission-based precautions may be accessed at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-hospitalized-patients.html>.

### **Rule 2. Requirements of licensed camp operators.**

(1) As a condition of housing licensure and in order to conform to standards of health in light of the risks of the COVID-19 pandemic, all owners and operators of agricultural labor housing camps licensed by the Michigan department of agriculture and rural development under part 124 of the public health code, 1978 PA 368, MCL 333.12401 to 333.12434, must implement the following:

(a) Develop and ensure implementation of a COVID-19 preparedness and response plan, consistent with recommendations specific to housing in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration, at: <https://www.osha.gov/Publications/OSHA3990.pdf> and that includes the following:

(i) Identification of a camp supervisor to answer camp occupant questions about safety procedures used in the camp, availability of medical and testing support, and provision of isolation housing as needed.

(ii) A training component to provide each adult camp occupant the following information:

(A) Social distancing measures to reduce and prevent the spread of COVID-19.

(B) Proper wearing of personal protective equipment.

(C) Enhanced sanitation and prevention measures for camp occupants that include:

(I) Cleaning and sanitizing common use areas daily, including, but not limited to, central restrooms, laundry facilities, and communal kitchens.

(II) Provisions for providing cleaning products to occupants for self-contained living units with their own kitchen, bath, and sleeping quarters.

(III) Provisions for cleaning areas where individuals in isolation or quarantine are housed.

(IV) Provisions for separation of beds by at least 6 feet or more in all directions, installation of barriers between beds to shield occupants from aerosol transmission, or other control and prevention measures between beds as approved by the department.

(V) Provisions for cleaning contact areas of vehicles, machinery, equipment, and tools prior to each work shift and between users.

(b) Develop, maintain, and update as necessary a listing of names and emergency contact information for each camp resident with an indication if the housing provider also employs that individual.

(c) Establish a posting location in each camp that is easily accessible to camp occupants for the provision of information relative to COVID-19 mitigation.

### **Rule 3. Posting of information.**

(1) As a condition of housing licensure and in order to conform to standards of health in light of the risks of the COVID-19 pandemic, all owners and operators of agricultural labor housing camps must post information at the location required in Rule 2 that includes all of the following:

- (a) Camp name and street address for location by 911 and other emergency services.
- (b) Name and phone number of the current camp supervisor.
- (c) Phone number for the local health department.
- (d) Phone number for the Michigan COVID-19 hotline, 888-535-6136.
- (e) Information on health clinics within 10 miles of the camp, and state established medical, isolation, and quarantine facilities established for coronavirus response.
- (f) Information on the location of additional sanitation and PPE supplies.
- (g) A copy of the current license issued by the department for the housing.

(2) The information in subrule (1)(a) to (f) of this rule must be printed in English, Spanish, and if 5% or more of camp occupants speak another language, that language.

### **Rule 4. Suspected or confirmed cases.**

(1) As a condition of housing licensure and in order to conform to standards of health in light of the risks of the COVID-19 pandemic, licensed camp operators must:

(a) Report the name, address, living unit label, and pertinent contact information for any COVID-19 suspected or confirmed individual in licensed housing to the local health department as soon as practical but in no event later than 24 hours of receiving notice about the suspected or confirmed case of COVID-19.

(b) Arrange for COVID-19-suspected and COVID-19-confirmed residents to be evaluated by a healthcare provider through the county local health department or a federally qualified health center. Initial contact with the local health department or the federally qualified health center must occur as soon as practical but in no event later than 24 hours of receiving notice about the suspected or confirmed case of COVID-19.

(c) Provide isolation housing for COVID-19-confirmed residents approved by either the department or the local health department, unless the COVID-19-confirmed resident resides where they can effectively isolate themselves. COVID-19-confirmed residents must have access to bathroom facilities used only by COVID-19-confirmed residents. Food and water must be delivered, and dedicated cooking facilities may be provided.

(d) Provide quarantine housing approved by either the department or the local health department for COVID-19-suspected residents and individuals who were exposed to a confirmed COVID-19

positive individual. Quarantined individuals must have access to bathroom facilities used only by COVID-19-suspected residents and individuals who were exposed to a confirmed COVID-19 positive individual. Food and water must be delivered, and dedicated cooking facilities may be provided.

(e) Post notice at the entrance to the isolation and quarantine areas that anyone entering must wear proper PPE, including a facemask and gloves, and wash their hands thoroughly immediately after departure.

**Rule 5. Applicability.**

(1) Camps that have been licensed for calendar year 2021 have 30 days from the effective date of these rules to comply with the provisions of these rules.

(2) The department may grant an exemption from a provision of these rules if there is clear and convincing evidence that the alternative to the rule complies with the intent of the emergency rule from which exemption is sought.

(3) Nothing in this section shall be construed to permit owners or operators of employer-provided migrant housing camps to deny access to any person on the basis that the camp is a worksite.



March 1, 2021

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Gary McDowell, Director, Department of  
Agriculture and Rural Development

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Date

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Michigan Department of Agriculture & Rural Development that the circumstances creating an emergency have occurred and the promulgation of the above rules is required for the preservation of the public health, safety, and welfare.



2/25/2021

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Gretchen Whitmer, Governor

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Date

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM RULES

**CERTIFICATE OF NEED FOR EXTENSION OF  
EMERGENCY RULE AMENDING RULE 101, R 792.10101**

Pursuant to Section 48(1) of 1969 PA 306, as amended, MCL 24.248(1), I hereby certify that it is necessary to extend the effectiveness of Michigan Administrative Hearing System Emergency Rule Amending Rule 101, R 792.10101, which was filed with the secretary of state on October 16, 2020, for an additional 6 months. Therefore, Emergency Rule Amending Rule 101, R 792.10101, shall remain effective until October 18, 2021.



4/11/2021

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Gretchen Whitmer, Governor

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Date

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM RULES

**EMERGENCY RULE  
AMENDING RULE 101, R 792.10101**

Filed with the secretary of state on October 16, 2020

These rules take effect upon filing with the secretary of state and shall remain in effect for 6 months.

By authority conferred on the executive director of the Michigan office of administrative hearings and rules by section 33 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, and Executive Reorganization Order No. 2019-1, MCL 324.99923.

**FINDING OF EMERGENCY**

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. On March 10, 2020, Governor Gretchen Whitmer declared a state of emergency in response to the COVID-19 pandemic. On March 13, 2020, the President of the United States declared a national emergency in response to the COVID-19 pandemic. There is currently no approved vaccine for this disease, and it continues to remain a serious threat throughout the state of Michigan, with the number of confirmed cases at 134,656 and the number of confirmed deaths at 6,891, as of October 10, 2020.

On October 2, 2020, in *In re Certified Questions from the United States District Court, Western District of Michigan, Southern Division, (Midwest Institute of Health, PLLC v Governor)*, Docket No. 161492, \_\_\_NW2d \_\_, \_\_ Mich \_\_\_, Case No. 161492, the Michigan Supreme Court concluded that the Governor did not have authority under the emergency management act, 1976 PA 390, MCL 30.401 to 30.421, to issue or renew executive orders beyond April 30, 2020 related to the COVID-19 pandemic, nor did the Governor have such authority under the emergency powers of the governor act, 1945 PA 302, MCL 10.31 to 10.33, because the act unlawfully delegates legislative power to the executive branch in violation of the Michigan Constitution. The Court thus held that executive orders issued by the Governor in response to the COVID-19 pandemic, including those allowing for administrative hearings to be conducted remotely, now lack any basis under Michigan law.

To reduce the risk of both the transmission and a resurgence of COVID-19, and pursuant to MCL 24.248(1) and *Marc Slis, et al v. State of Michigan, et al*, \_\_\_ NW2d \_\_, \_\_\_ Mich App \_\_\_, Case No. 351211 (May 21, 2020), these emergency rules are promulgated by the Michigan office of administrative hearings and rules (MOAHR) to allow administrative law judges (ALJs) who

October 12, 2020



conduct hearings on behalf of the Michigan Employment Relations Commission (MERC) and the Public Service Commission (PSC) to continue to remotely hold these hearings during the COVID-19 pandemic and throughout the post COVID-19 transition period.

### **Overview**

In order to reduce the risk of both the transmission and a resurgence of COVID-19, MOAHR is able to conduct hearings by telephone or video conference as Rule 121 of the MAHS administrative hearing rules, Rule 792.10121, specifically authorizes MOAHR ALJs to "conduct all or part of a hearing by telephone, video-conference, or other electronic means." Rule 121 does not, however, apply to MERC or PSC hearings. Rule 101, R 792.10101(3) and (4), expressly state that the Michigan Administrative Hearing System rules do not govern proceedings before PSC or MERC, with the exception of provisions for disqualification and recusal of ALJs.

Since the start of the pandemic, MOAHR's ALJs have been remotely conducting hearings on behalf of PSC and MERC under the authority conferred upon MOAHR by emergency executive orders, including most recently Executive Orders 2020-186 and 2020-154. With the Michigan Supreme Court's recent invalidation of these emergency executive orders, MOAHR may be without authority to remotely conduct hearings on behalf of PSC and MERC, even with the stipulation of the parties. However, conducting these hearings in-person, particularly when the subject matter often involves multiple parties, attorneys, and witnesses, will unduly compromise the public health, safety, and welfare of all those in attendance, including immunocompromised individuals and other vulnerable individuals at enhanced risk of contracting COVID-19.

The Michigan Supreme Court's Administrative Order Nos. 2020-14 and 2020-19 authorize the continued use and expansion of remote hearings by trial courts throughout the State and, in doing so, Michigan has become a national model in how to provide access to justice during the pandemic. Allowing MOAHR to continue to remotely conduct hearings on behalf of PSC and MERC during the COVID-19 pandemic and throughout the return to full capacity period is consistent with the practices of our justice system. MOAHR therefore finds it necessary and proper to temporarily amend Rule 101, R 792.10101, of the MAHS administrative hearing rules.

An amendment to PSC's and MERC's existing rule sets would ultimately be prudent but would not occur in time to address the current situation. If the usual notice, hearing, and participation procedures of rulemaking were followed, numerous in-person hearings would be conducted during the delay, resulting in potential exposure to MOAHR's ALJs, parties, witnesses, attorneys, and other hearing participants. Promulgation of this emergency rule will immediately eliminate the risk of exposure to all participants in the hearing process. Thus, the preservation of the public health, safety, and welfare requires the promulgation of emergency rules as provided for in section 48 of the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

Rule 1. Application of other rules.

These emergency rules, while in effect, supersede R 792.10101 of the Michigan Administrative Code.

Rule 2.

(1) These rules govern practice and procedure in administrative hearings conducted by the Michigan administrative hearing system under Executive Reorganization Order No. 2005-1, MCL 445.2021, Executive Reorganization Order No. 2011-4, MCL 445.2030, and Executive Reorganization Order No. 2011-6, MCL 445.2032.

(2) The rules in part 1 apply to all administrative hearings conducted by the hearing system, except hearings specifically exempted under MCL 445.2021, MCL 445.2030, and MCL 445.2032, and subject to prevailing practices and procedures established by state and federal statutes and the rules for specific types of hearings contained in parts 2, 3, and 5 to 19 of the rules.

(3) The rules in this part do not govern part 4 proceedings before the Michigan public service commission, except R 792.10106(2), (3), (4), (5), (6), and (7), provisions for disqualification and recusal of administrative law judges, and R 792.10121, provisions for telephone and electronic hearings.

(4) The rules in this part do not govern proceedings before the employment relations commission, except R 792.10106(2), (3), (4), (5), (6), and (7), provisions for disqualification and recusal of administrative law judges, and R 792.10121, provisions for telephone and electronic hearings.



October 13, 2020

Suzanne D. Sonneborn, Executive Director,  
Michigan Office of Administrative Hearings  
and Rules

Date

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Michigan Office of Administrative Hearings and Rules that the circumstances creating an emergency have occurred and the promulgation of the above rules is required for the preservation of the public health, safety, and welfare.



October 15, 2020

Gretchen Whitmer, Governor

Date

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY  
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
GENERAL RULES

**CERTIFICATE OF NEED FOR EXTENSION OF EMERGENCY RULES**

Pursuant to Section 48(1) of 1969 PA 306, as amended, MCL 24.248(1), I hereby certify that it is necessary to extend the Coronavirus Disease 2019 (COVID-19) Emergency Rules, which was filed with the secretary of state on October 14, 2020, for an additional 6 months. Therefore, the COVID-19 Emergency Rules shall remain effective until October 14, 2021.



4/10/21

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Gretchen Whitmer, Governor

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Date



**DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY**  
**MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

**GENERAL RULES**

**EMERGENCY RULES**

**CORONAVIRUS DISEASE 2019 (COVID-19)**

Filed with the secretary of state on October 14, 2020.

These rules take effect upon filing with the secretary of state and shall remain in effect for 6 months.

(By authority conferred on the director of the department of labor and economic opportunity by sections 19, 21, and 24 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1019, 408.1021, and 408.1024, and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1, 2008-4, 2011-4, and 2019-3, MCL 330.3101, 445.2001, 445.2011, 445.2025, 445.2030, and 125.1998.)

**FINDING OF EMERGENCY**

These rules are promulgated by the Director of the Michigan Department of Labor and Economic Opportunity to establish requirements for employers to control, prevent, and mitigate the spread of coronavirus disease 2019 (COVID-19) among employees. Based on the best available scientific evidence and public health guidance published by the U.S. Centers for Disease Control (CDC) and other public health authorities, COVID-19 is an infectious disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). SARS-CoV-2 is easily transmitted through the air from person-to-person through respiratory aerosols, and the aerosols can settle and deposit on environmental surfaces where they can remain viable for days. There is currently no approved vaccine or proven effective antiviral treatment for COVID-19. In addition to its contagious nature, COVID-19 is dangerous and deadly. As of October 7, 2020, COVID-19 has infected 130,842 Michiganders and killed 6,847 in less than seven months.

Work, by its nature, removes people from the confines and relative safety of their homes to interact with others who may be carrying the virus including coworkers, customers, patients, or the public at large. Employees who come into contact with others at work are at elevated risk of infection.

Since March 2020, employers have reported 30 worker deaths from COVID-19 in Michigan and 127 in-patient hospitalizations for COVID-19 potentially linked to workplace exposure to SARS-CoV-2. MIOSHA has received over 3,800 complaints from employees alleging uncontrolled COVID-19 hazards in the workplace and 263 referrals from local government, including local health departments, indicating that businesses were not taking all the necessary measures to protect their employees from SARS-CoV-2 infection.

The Legislature has declared that “all employees shall be provided safe and healthful work environments free of recognized hazards.” MCL 408.1009. Employers must provide employees with “a place of employment that is free from recognized hazards that are causing, or are likely to

October 14, 2020



cause, death or serious physical harm to the employee.” MCL 408.1011(a). Nonetheless, Michigan’s experience with COVID-19 demonstrates that the disease can spread rapidly without protective measures and standards in place. Workplaces, where employees, customers, and members of the public congregate, pose a particular threat for COVID-19’s spread. To mitigate and limit COVID-19’s spread in workplaces and to protect employees across Michigan, it is necessary to impose these rules and standards.

Businesses must do their part to protect employees, their patrons, and their communities. Many businesses have already done so by implementing robust safeguards to prevent viral transmission. But we can and must do more: no one should feel unsafe at work. Pursuant to section 21(2) of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1021, I find that these emergency rules are necessary to protect employees during the ongoing COVID-19 pandemic.

Based on the best available scientific evidence and public health guidance available regarding the spread of COVID-19 in the workplace, I find that these emergency rules are necessary to protect employees. If the non-emergency rulemaking process specified in the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.201 to 24.328, for the promulgation of rules was followed, employees across Michigan may be unnecessarily exposed to SARS-CoV-2 during the rule promulgation process. Further, existing MIOSHA rules do not directly address COVID-19’s spread in the workplace and employees are likely to experience an increased probability of infection at work until the protective measures in this rule are in place. Accordingly, following the non-emergency rulemaking process would undermine the effectiveness of Michigan’s emergency response to COVID-19, and expose Michigan workers to a higher risk of contracting the disease in their places of employment.

The Director, therefore, for the preservation of the public health, safety, and welfare, finds that a clear and convincing need exists for the promulgation of emergency rules as provided in section 48 of the APA, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

### **Rule 1. Scope and application.**

These rules apply to all employers covered in the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

### **Rule 2. Definitions.**

#### **(1) As used in these rules:**

- (a) “Close contact” means someone who was within 6 feet of an infected person for at least 15 minutes starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to specimen collection) until the time the person is isolated.
- (b) “COVID-19” means coronavirus disease 2019, a severe acute respiratory disease characterized by symptoms including fever, cough, fatigue, and shortness of breath which may progress to pneumonia, multi-organ failure, and death.
- (c) “Known cases of COVID-19” means persons who have been confirmed through diagnostic testing to have COVID-19.
- (d) “SARS-CoV-2” means severe acute respiratory syndrome coronavirus 2, the virus which is the causative agent of COVID-19.
- (e) “Suspected cases of COVID-19” means persons who have symptoms of COVID-19 but have not been confirmed through diagnostic testing or persons who have had close contact with a person who has been confirmed through diagnostic testing to have COVID-19.

### **Rule 3. Exposure determination for all employers.**



- (1) The employer shall evaluate routine and reasonably anticipated tasks and procedures to determine whether there is actual or reasonably anticipated employee exposure to SARS-CoV-2.
- (2) The employer shall categorize jobs tasks and procedures into the following risk categories:
  - (a) Lower exposure risk job tasks and procedures. These job tasks and procedures are those that do not require contact with people known to be or suspected of being infected with SARS-CoV-2 nor frequent close contact (e.g., within 6 feet) with the general public. Workers in this category have minimal occupational contact with the public and other coworkers.
  - (b) Medium exposure risk job tasks and procedures. These job tasks and procedures include those that require frequent or close contact (e.g., within 6 feet) with people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients. In areas without ongoing community transmission, workers in this risk group may have frequent contact with travelers who may return from locations with widespread SARS-CoV-2 transmission. In areas where there is ongoing community transmission, workers in this category may have contact with the general public (e.g., schools, high-population-density work environments, high-volume retail settings).
  - (c) High exposure risk job tasks and procedures. These job tasks and procedures are those with high potential for exposure to known or suspected sources of COVID-19. Workers in this category could include licensed health care professionals, medical first responders, nursing home employees, law enforcement, correctional officers, or mortuary workers.
  - (d) Very high exposure risk job tasks and procedures. These job tasks and procedures are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures. Workers in this category can include:
    - (i) Healthcare workers (e.g., doctors, nurses, dentists, paramedics, emergency medical technicians) performing aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on known or suspected COVID-19 patients.
    - (ii) Health care or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients (e.g., manipulating cultures from known or suspected COVID-19 patients).
    - (iii) Morgue workers performing autopsies, which generally involve aerosol-generating procedures, on the bodies of people who are known to have or are suspected of having COVID-19 at the time of their death.

**Rule 4. COVID-19 preparedness and response plan for all employers.**

- (1) The employer shall develop and implement a written COVID-19 preparedness and response plan, consistent with the current guidance for COVID-19 from the US Centers for Disease Control and Prevention (CDC) and recommendations in “Guidance on Preparing Workplaces for COVID-19,” developed by the Occupational Health and Safety Administration (OSHA).
- (2) The preparedness and response plan shall include the employee exposure determination from Rule 3 and shall detail the measures the employer will implement to prevent employee exposure, including any:
  - (a) Engineering controls.



- (b) Administrative controls.
  - (c) Basic infection prevention measures.
  - (d) Personal protective equipment.
  - (e) Health surveillance.
  - (f) Training.
- (3) The employer shall make the preparedness and response plan readily available to employees and their representatives, whether via website, internal network, or by hard copy.

**Rule 5. Basic infection prevention measures for all employers.**

- (1) The employer shall promote frequent and thorough hand washing, including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide antiseptic hand sanitizers or alcohol-based hand towelettes containing at least 60 percent alcohol.
- (2) The employer shall require workers who are sick to not report to work or work in an isolated location.
- (3) The employer shall prohibit workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible.
- (4) The employer shall increase facility cleaning and disinfection to limit exposure to SARS-CoV-2, especially on high-touch surfaces (e.g., door handles), paying special attention to parts, products, and shared equipment (e.g., tools, machinery, and vehicles).
- (5) The employer shall establish procedures for disinfection in accordance with CDC guidance if it is suspected or confirmed that an employee, visitor, or customer has a known case of COVID-19.
- (6) The employer shall use Environmental Protection Agency (EPA)-approved disinfectants that are expected to be effective against SARS-CoV-2 based on data for harder to kill viruses.
- (7) The employer shall follow the manufacturer's instructions for use of all cleaning and disinfection products (e.g., concentration, application method and contact time, and personal protective equipment).
- (8) The employer shall create a policy prohibiting in-person work for employees to the extent that their work activities can feasibly be completed remotely.

**Rule 6. Health surveillance for all employers.**

- (1) The employer shall conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19, together with, if possible, a temperature screening.
- (2) The employer shall direct employees to promptly report any signs and symptoms of COVID-19 to the employer before or during the work shift.
- (3) The employer shall physically isolate any employees known or suspected to have COVID-19 from the remainder of the workforce, using measures such as, but not limited to:
  - (a) Not allowing known or suspected cases to report to work.
  - (b) Sending known or suspected cases away from the workplace.
  - (c) Assigning known or suspected cases to work alone at a remote location (for example, their home), as their health allows.
- (4) When an employer learns of an employee, visitor, or customer with a known case of COVID-19, the employer shall:
  - (a) Immediately notify the local public health department, and



- (b) Within 24 hours of learning of the known case, notify any co-workers, contractors, or suppliers who may have come into contact with the person with a known case of COVID-19.
- (5) The employer shall allow employees with a known or suspected case of COVID-19 to return to the workplace only after they are no longer infectious according to the latest guidelines from the CDC and they are released from any quarantine or isolation order by the local public health department.

**Rule 7. Workplace controls for all employers.**

- (1) The employer shall designate one or more worksite COVID-19 safety coordinators to implement, monitor, and report on the COVID-19 control strategies developed under these rules. The COVID-19 safety coordinator must remain on-site at all times when employees are present on site. An on-site employee may be designated to perform the COVID-19 safety coordinator role.
- (2) The employer shall place posters in the languages common in the employee population that encourage staying away from the workplace when sick, cough and sneeze etiquette, and proper hand hygiene practices.
- (3) The employer shall keep everyone on the worksite premises at least 6 feet from one another to the maximum extent possible and to reduce congestion, including using ground markings, signs, and physical barriers, as appropriate to the worksite.
- (4) The employer shall provide non-medical grade face coverings to their employees at no cost to the employee.
- (5) The employer shall require face coverings to be worn when employees cannot consistently maintain 6 feet of separation from other individuals in the workplace and consider face shields when employees cannot consistently maintain 3 feet of separation from other individuals in the workplace.
- (6) The employer shall require face coverings in shared spaces, including during in-person meetings and in restrooms and hallways.

**Rule 8. Personal protective equipment requirements for all employers.**

- (1) The employer shall provide employees with the types of personal protective equipment, including respirators if necessary, for protection from SARS-CoV-2 appropriate to the exposure risk associated with the job. The employer must follow current CDC and OSHA guidance for personal protective equipment.
- (2) The employer shall ensure that the personal protective equipment is properly fitted and worn; used consistently; regularly inspected, maintained, and replaced, as necessary; and properly removed, cleaned, and stored or disposed of to avoid contamination of self, others, or the work environment.
- (3) In establishments that provide medical treatment or housing to known or suspected cases of COVID-19, the employer shall ensure that employees in frequent or prolonged close contact with such cases are provided with and wear, at a minimum, an N95 respirator, goggles or face shield, and a gown.

**Rule 9. Industry-specific requirements.** An employer of a business, operation, or facility in the industry sectors named below shall comply with the following requirements specific for its business, operation, or facility.

- (1) **Construction.** Businesses or operations in the construction industry must:
  - (a) Create dedicated entry point(s) at every worksite, if possible, for daily screening as provided in Rule 6 of these rules, or in the alternative issue stickers or other indicators to employees to show that they received a screening before entering the worksite that day.



- (b) Identify choke points and high-risk areas where employees must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.
  - (c) Create protocols for minimizing personal contact upon delivery of materials to the worksite.
- (2) **Manufacturing.** Manufacturing facilities must:
  - (a) Create dedicated entry point(s) at every facility for daily screening and ensure physical barriers are in place to prevent anyone from bypassing the screening.
  - (b) Create protocols for minimizing personal contact upon delivery of materials to the facility.
- (3) **Retail, libraries, and museums.** Retail stores that are open for in-store sales, as well as libraries and museums, must:
  - (a) Create communications material for customers (e.g., signs or pamphlets) to inform them of changes to store practices and to explain the precautions the store is taking to prevent infection.
  - (b) Require patrons to wear a face covering (unless the patron is unable medically to tolerate a face covering).
  - (c) Post signs at store entrances instructing customers to wear a face covering when inside the store.
  - (d) Post signs at store entrances informing customers not to enter if they are or have recently been sick.
  - (e) Design spaces and store activities in a manner that encourages employees and customers to maintain 6 feet of distance from one another.
  - (f) Install physical barriers at checkout or other service points that require close interaction, including plexiglass barriers, tape markers, or tables.
  - (g) Establish an enhanced cleaning and sanitizing protocol for high-touch areas like restrooms, credit-card machines, keypads, counters, shopping carts, and other surfaces.
- (4) **Restaurants and bars.** Restaurants and bars must:
  - (a) Require 6 feet of separation between parties or groups at different tables or bar tops (e.g., spread tables out, use every other table, remove or put up chairs or barstools that are not in use).
  - (b) Require patrons to wear a face covering except when seated at their table or bar top (unless the patron is unable medically to tolerate a face covering).
  - (c) Prohibit access to common areas in which people can congregate.
  - (d) Create communications material for customers (e.g., signs, pamphlets) to inform them of changes to restaurant or bar practices and to explain the precautions that are being taken to prevent infection.
  - (e) Post signs at all entrances informing customers not to enter if they are or have recently been sick.
  - (f) Post signs instructing customers to wear face coverings until they are seated at their table.
  - (g) Require hosts, servers, and staff to wear face coverings in the dining area in addition to areas where social distancing cannot be maintained.
- (5) **Health care.** Health facilities or agencies, including outpatient health-care facilities, clinics, primary care physician offices, dental offices, and veterinary clinics, must:
  - (a) Post signs at entrance(s) instructing patients to wear a face covering when in the facility, except as necessary for identification or to facilitate an examination or procedure.



- (b) Limit waiting-area occupancy to the number of individuals who can be present while staying 6 feet away from one another and ask patients, if possible, to wait in cars for their appointment to be called.
- (c) Mark or arrange waiting rooms to enable 6 feet of social distancing (e.g., by placing X's on the ground and/or removing seats in the waiting room).
- (d) Conduct a common screening protocol for all patients, including a temperature check and questions about COVID-19 symptoms.
- (e) Place hand sanitizer and face coverings at patient entrances.
- (f) Require patients to wear a face covering when in the facility, except as necessary for identification or to facilitate an examination or procedure.
- (g) Install physical barriers at sign-in, temperature screening, or other service points that normally require personal interaction (e.g., plexiglass, cardboard, tables).
- (6) **In-home services.** All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like, must:
  - (a) Maintain accurate appointment record, including date and time of service, name of client, and contact information, to aid with contact tracing.
  - (b) Prior to entering the home, inquire with the customer whether anyone in the household has been diagnosed with COVID-19, is experiencing symptoms of COVID-19, or has had close contact with someone who has been diagnosed with COVID-19. If so, the business or operation must reschedule for a different time.
- (7) **Personal-care services.** All businesses or operations that provide barbering, cosmetology services, body art services (including tattooing and body piercing), tanning services, massage services, or similar personal-care services must:
  - (a) Post signs at all entrances instructing customers to wear a face covering when inside the facility.
  - (b) Post signs at all entrances informing customers not to enter if they are or have recently been sick.
  - (c) Restrict entry to customers, to a caregiver of those customers, or to the minor dependents of those customers.
  - (d) Limit waiting-area occupancy to the number of individuals who can be present while staying 6 feet away from one another and ask customers, if possible, to wait in cars for their appointment to be called.
  - (e) Discard magazines in waiting areas and other non-essential, shared items that cannot be disinfected.
  - (f) Mark or arrange waiting rooms to enable 6 feet of social distancing (e.g., by placing X's on the ground and/or removing seats in the waiting room).
  - (g) Require employees and customers to wear a face covering at all times, except that customers may temporarily remove a face covering when receiving a service that requires its removal. During services that require a customer to remove their face covering, an employee must wear a face shield or goggles in addition to the face covering.
- (8) **Public accommodations.** Sports and entertainment facilities, including arenas, cinemas, concert halls, performance venues, sporting venues, stadiums and theaters, as well as places of public amusement, such as amusement parks, arcades, bingo halls, bowling alleys, night clubs, skating rinks, and trampoline parks, must:
  - (a) Post signs at all entrances instructing customers to wear a face covering when inside the facility.
  - (b) Post signs outside of entrances informing customers not to enter if they are or have recently been sick.
  - (c) Require patrons to wear a face covering (unless the patron is unable medically to tolerate a face covering).



- (d) Establish crowd-limiting measures to meter the flow of patrons (e.g., digital queuing, delineated waiting areas, parking instructions, social distance markings on ground or cones to designate social distancing).
- (e) For sports and entertainment facilities, establish safe exit procedures for patrons (e.g., dismiss groups based on ticket number, row).
- (9) **Sports and exercise facilities.** Gymnasiums, fitness centers, recreation centers, exercise facilities, exercise studios, bowling alleys, roller rinks, ice rinks, and like facilities must:
  - (a) Post signs at all entrances instructing customers to wear a face covering when inside the facility.
  - (b) Post signs outside of entrances instructing individuals not to enter if they are or have recently been sick.
  - (c) Mandate wearing of facial coverings at all times except when swimming.
  - (d) Provide equipment-cleaning products throughout the facility for use on equipment.
  - (e) Ensure that ventilation systems operate properly.
- (10) **Meat and poultry processing.** Meat and poultry processing plants must:
  - (a) Create at least 1 dedicated entry point at every facility for daily screening and ensure physical barriers are in place to prevent anyone from bypassing the screening.
  - (b) Provide clean face coverings or disposable mask options for employees to use when the coverings become wet, soiled, or otherwise visibly contaminated over the course of a workday.
- (11) **Casinos.** Casinos must:
  - (a) Post signs at all entrances instructing customers to wear a face covering when inside the facility.
  - (b) Designate entry points and exit points with extensive signage of the directional flow of patrons.
  - (c) Place signs at each entrance point, cage, and throughout the casino reminding patrons of CDC guidelines for social distancing practices, proper washing of hands, wearing face coverings, and to stay at home if feeling ill or sick.
  - (d) Conduct a daily entry screening protocol for customers and any other individuals entering the facility, including a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19, together with temperature screening.
  - (e) Require patrons to wear a face covering, except while eating or drinking or for identification purposes.

**Rule 10. Training requirements for all employers.**

- (1) The employer shall provide training to employees on SARS-CoV-2 and COVID-19.
- (2) The employer shall provide any communication and training on COVID-19 infection control practices in the primary languages common in the employee population.
- (3) The training shall cover:
  - (a) Workplace infection-control practices.
  - (b) The proper use of personal protective equipment.
  - (c) Steps the employee must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19.
  - (d) How to report unsafe working conditions.
- (4) The employer shall provide updated training if it changes its preparedness and response plan or new information becomes available about the transmission of SARS-CoV-2 or diagnosis of COVID-19.

**Rule 11. Recordkeeping requirements for all employers.**



- (1) Employers must maintain a record of the following requirements:
  - (a) Training. The employer shall maintain a record of all COVID-19 employee training.
  - (b) Screening protocols. The employer shall maintain a record of screening for each employee or visitor entering the workplace.
  - (c) Records of required notifications. The employer shall maintain a record of each notification required by Rule 6 of these rules.
- (2) Employers must maintain records for 1 year from time of generation.

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

10/14/2020  
Date

Sean Egan  
Sean Egan  
Director COVID Workplace Safety

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Labor and Economic Opportunity that circumstances creating an emergency have occurred and the public interest requires the promulgation of the above rules.

10/14/2020  
Date

Gretchen Whitmer  
Honorable Gretchen Whitmer  
Governor

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY  
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

GENERAL RULES

**EMERGENCY RULES**

**CORONAVIRUS DISEASE 2019 (COVID-19)**

Filed with the secretary of state on May 24, 2021

These rules take effect upon filing with the secretary of state and shall remain in effect until October 14, 2021.

(By authority conferred on the director of the department of labor and economic opportunity by sections 19, 21, and 24 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1019, 408.1021, and 408.1024, and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1, 2008-4, 2011-4, and 2019-3, MCL 330.3101, 445.2001, 445.2011, 445.2025, 445.2030, and 125.1998)

**FINDING OF EMERGENCY**

These rules are promulgated by the Director of the Michigan Department of Labor and Economic Opportunity to establish requirements for employers to control, prevent, and mitigate the spread of coronavirus disease 2019 (COVID-19) among employees. Based on the best available scientific evidence and public health guidance published by the U.S. Centers for Disease Control (CDC) and other public health authorities, COVID-19 is an infectious disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). SARS-CoV-2 is easily transmitted through the air from person-to-person through respiratory aerosols. In addition to its contagious nature, COVID-19 is dangerous and deadly. As of May 11, 2021, the State of Michigan had a total of 867,341 confirmed cases and 18,338 deaths.

Work, by its nature, removes people from the confines and relative safety of their homes to interact with others who may be carrying the virus including coworkers, customers, patients, or the public at large. Employees who come into contact with others at work are at elevated risk of infection.

Since March 2020, employers have reported 61 worker deaths from COVID-19 in Michigan and 173 in-patient hospitalizations for COVID-19 potentially linked to workplace exposure to SARS-CoV-2. MIOSHA has received over 15,000 complaints from employees alleging uncontrolled COVID-19 hazards in the workplace and 580 referrals from local government, including local health departments, indicating that businesses were not taking all the necessary measures to protect their employees from SARS-CoV-2 infection.

May 21, 2021

To date, the Food and Drug Administration has granted emergency use authorization to three vaccines to prevent COVID-19, providing a path to end the pandemic. The State of Michigan is part of the largest mass vaccination effort in modern history and is presently working toward vaccinating at least 70% of its residents 16 and older as quickly as possible.

The Legislature has declared that “all employees shall be provided safe and healthful work environments free of recognized hazards.” MCL 408.1009. Employers must provide employees with “a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.” MCL 408.1011(a). Nonetheless, Michigan’s experience with COVID-19 demonstrates that the disease can spread rapidly without protective measures and standards in place. Workplaces, where employees, customers, and members of the public congregate, pose a particular threat for COVID-19’s spread. To mitigate and limit COVID-19’s spread in workplaces and to protect employees across Michigan, it is necessary to impose these rules and standards.

Businesses must do their part to protect employees, their patrons, and their communities. Many businesses have already done so by implementing robust safeguards to prevent viral transmission. But we can and must do more: no one should feel unsafe at work. Pursuant to section 21(2) of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1021, I find that these emergency rules are necessary to protect employees during the ongoing COVID-19 pandemic.

Based on the best available scientific evidence and public health guidance available regarding the spread of COVID-19 in the workplace, I find that these emergency rules are necessary to protect employees. If the non-emergency rulemaking process specified in the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.201 to 24.328, for the promulgation of rules was followed, employees across Michigan may be unnecessarily exposed to SARS-CoV-2 during the rule promulgation process. Further, existing MIOSHA rules do not directly address COVID-19’s spread in the workplace and employees are likely to experience an increased probability of infection at work until the protective measures in this rule are in place. Accordingly, following the non-emergency rulemaking process would undermine the effectiveness of Michigan’s emergency response to COVID-19, and expose Michigan workers to a higher risk of contracting the disease in their places of employment.

The Director, therefore, for the preservation of the public health, safety, and welfare, finds that a clear and convincing need exists for the promulgation of emergency rules as provided in section 48 of the APA, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

### **Rule 1. Scope and application.**

These rules apply to all employers covered in the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, for SARS-CoV-2 coronavirus and COVID-19.

**Rule 1a. Application of other rules.**

These emergency rules supersede the entirety of the emergency rules filed on October 14, 2020, and the extension of these emergency rules filed on April 13, 2021.

**Rule 1b. Suspension of previous rule.**

In the event these emergency rules issued on May 24, 2021 are deemed invalid by a court of competent jurisdiction, the previously filed rules will remain effective for the duration of the extension.

**Rule 2. Definitions.**

As used in these rules:

- (a) "Close contact" means close contact as defined by the latest United States Centers for Disease Control and Prevention (CDC) guidelines at the time of contact.
- (b) "COVID-19" means a viral respiratory illness characterized by symptoms defined by the CDC.
- (c) "Known cases of COVID-19" means persons who have been confirmed through diagnostic testing to have COVID-19.
- (d) "SARS-CoV-2" means the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), the virus which is the causative agent of [COVID-19](#).
- (e) "Suspected cases of COVID-19" means persons who have symptoms of COVID-19 but have not been confirmed through diagnostic testing or unvaccinated persons who have had close contact with a person who has been confirmed through diagnostic testing to have COVID-19.
- (f) "Fully vaccinated persons" means persons for whom at least 2 weeks have passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine.

**Rule 3. COVID-19 preparedness and response plan for all employers.**

- (1) The employer shall develop and implement a written COVID-19 preparedness and response plan consistent with these rules and current guidance for COVID-19 from the CDC and the Occupational Health and Safety Administration (OSHA).
- (2) The preparedness and response plan shall include the measures the employer will implement to prevent employee exposure, including any applicable:
  - (a) Engineering controls.
  - (b) Administrative controls.
  - (c) Basic infection prevention measures.
  - (d) Personal protective equipment.
  - (e) Health surveillance.
  - (f) Training.
- (3) The employer shall make the preparedness and response plan readily available to employees and their representatives, whether via website, internal network, or by hard copy.

**Rule 4. Basic infection prevention measures for all employers.**

(1) The employer shall promote frequent and thorough hand washing, including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, the employer shall provide antiseptic hand sanitizers or alcohol-based hand towelettes containing at least 60 percent alcohol.

(2) The employer shall require workers who are experiencing symptoms of COVID-19 to not report to work or work in an isolated location.

(3) The employer shall increase facility cleaning and disinfection to limit exposure to SARS-CoV-2, in accordance with the latest CDC guidance.

(4) The employer shall use Environmental Protection Agency (EPA)-approved disinfectants that are expected to be effective against SARS-CoV-2 based on data for harder to kill viruses.

**Rule 5. Health surveillance for all employers.**

(1) The employer shall conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19.

(2) The employer shall direct employees to promptly report any signs and symptoms of COVID-19 to the employer before or during the work shift.

(3) The employer shall physically isolate any employees known or suspected to have COVID-19 from the remainder of the workforce, using measures such as, but not limited to:

- (a) Not allowing known or suspected cases to report to work.
- (b) Sending known or suspected cases away from the workplace.
- (c) Assigning known or suspected cases to work alone at a remote location

(for example, their home), as their health allows.

(4) When an employer learns of an employee, visitor, or customer with a known case of COVID-19, the employer shall, within 24 hours, notify any co-workers, contractors, or suppliers who may have come into contact with the person with a known case of COVID-19.

(5) The employer shall allow employees with a known or suspected case of COVID-19 to return to the workplace only after they are no longer infectious according to the latest guidelines from the CDC.

**Rule 6. Workplace controls for all employers.**

(1) The employer shall designate 1 or more worksite COVID-19 safety coordinators to implement, monitor, and report on the COVID-19 control strategies developed under these rules.

(2) The employer shall ensure that any employees, except fully vaccinated persons, remain at least 6 feet from one another to the maximum extent feasible while on worksite premises.

(3) The employer shall provide non-medical grade face coverings to their employees at no cost to the employee. Employers are not required to provide non-medical grade face coverings to fully vaccinated persons.



(4) The employer shall require any employee, except fully vaccinated persons, to wear face coverings when employees cannot consistently maintain 6 feet of separation from other individuals indoors in the workplace. However, fully vaccinated persons must continue to wear face coverings when in the healthcare setting where patients may be present and when using airplane or public transportation if required by the latest CDC guidance.

(5) Compliance with subrules (2) and (4) of this rule may be accomplished in a manner deemed effective for the place of employment. This may include:

(a) Keeping records of whether employees are fully vaccinated persons, and exempting them from subrules (2) and (4) of this rule accordingly.

(b) Posting signs in the work area reminding employees that are not fully vaccinated to wear face coverings and maintain appropriate distancing.

(c) Allowing or requiring remote work.

(d) Requiring face coverings and social distancing for all employees regardless of vaccination status.

#### **Rule 7. Training requirements for all employers.**

(1) The employer shall provide training to employees on SARS-CoV-2 and COVID-19.

(2) The employer shall provide any communication and training on COVID-19 infection control practices in the primary languages common in the employee population.

(3) The training shall cover all of the following:

(a) Workplace infection-control practices, including information on vaccinations available for COVID-19.

(b) The proper use of personal protective equipment.

(c) Steps the employee must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19.

(d) How to report unsafe working conditions.

(4) The employer shall provide updated training if it changes its preparedness and response plan, or new information becomes available about the transmission of SARS-CoV-2 or diagnosis of COVID-19.

#### **Rule 8. Recordkeeping requirements for all employers.**

(1) Employers must maintain a record of the following requirements:

(a) Training. The employer shall maintain a record of all COVID-19 employee training.

(b) Health screening protocols. The employer shall maintain a record of health screening for each non-vaccinated employee or contractor entering the workplace.


(c) If proceeding under Rule 6(5)(a), vaccination information sufficient for implementation

(d) Records of required notifications. The employer shall maintain a record of each notification required by Rule 5 of these rules.

(2) Employers must maintain records for 6 months from time of generation.


## DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

05/21/2021  
Date

  
Susan Corbin  
Acting Director

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Labor and Economic Opportunity that circumstances creating an emergency have occurred and the public interest requires the promulgation of the above rules.

5/23/2021  
Date

  
Honorable Gretchen Whitmer  
Governor

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY  
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

GENERAL RULES

**EMERGENCY RULES**

**CORONAVIRUS DISEASE 2019 (COVID-19)**

Filed with the secretary of state on June 22, 2021

These rules take effect upon filing with the secretary of state and shall remain in effect for 6 months.

(By authority conferred on the director of the department of labor and economic opportunity by sections 19, 21, and 24 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1019, 408.1021, and 408.1024, and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1, 2008-4, 2011-4, and 2019-3, MCL 330.3101, 445.2001, 445.2011, 445.2025, 445.2030, and 125.1998)

**FINDING OF EMERGENCY**

These rules are promulgated by the Director of the Michigan Department of Labor and Economic Opportunity to establish requirements for healthcare employers to control, prevent, and mitigate the spread of coronavirus disease 2019 (COVID-19) among employees. Based on the best available scientific evidence and public health guidance published by the U.S. Centers for Disease Control (CDC) and other public health authorities, COVID-19 is an infectious disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). SARS-CoV-2 is easily transmitted through the air from person-to-person through respiratory aerosols. In addition to its contagious nature, COVID-19 is dangerous and deadly. As of June 15, 2021, the State of Michigan had a total of 892,651 confirmed cases and 19,574 deaths.

Since March 2020, employers have reported 64 worker deaths from COVID-19 in Michigan and 173 in-patient hospitalizations for COVID-19 potentially linked to workplace exposure to SARS-CoV-2. MIOSHA has received over 15,000 complaints from employees alleging uncontrolled COVID-19 hazards in the workplace and 584 referrals from local government, including local health departments, indicating that businesses were not taking all the necessary measures to protect their employees from SARS-CoV-2 infection.

The Legislature has declared that “all employees shall be provided safe and healthful work environments free of recognized hazards.” MCL 408.1009. Employers must provide employees with “a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.” MCL

June 17, 2021

408.1011(a). Nonetheless, Michigan's experience with COVID-19 demonstrates that the disease can spread rapidly without protective measures and standards in place. To mitigate and limit COVID-19's spread in healthcare workplaces, it is necessary to impose these rules and standards.

Pursuant to section 21(2) of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1021, I find that these emergency rules are necessary to protect employees during the ongoing COVID-19 pandemic.

If the non-emergency rulemaking process specified in the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.201 to 24.328, for the promulgation of rules was followed, healthcare employees across Michigan may be unnecessarily exposed to SARS-CoV-2 during the rule promulgation process. Further, existing MIOSHA rules do not directly address COVID-19's spread in the healthcare workplace and healthcare employees are likely to experience an increased probability of infection at work until the protective measures in this rule are in place. Accordingly, following the non-emergency rulemaking process would undermine the effectiveness of Michigan's emergency response to COVID-19, and expose Michigan's healthcare workers to a higher risk of contracting the disease in their places of employment.

The United States Department of Labor, Occupational Safety and Health Administration (OSHA) is issuing an emergency temporary standard (ETS) to protect healthcare workers from occupational exposure to COVID-19 in settings where people with COVID-19 are expected to be present. During the period of the emergency standard, covered healthcare employers must develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the healthcare workplace.

The Director, therefore, for the preservation of the public health, safety, and welfare, finds that a clear and convincing need exists for the promulgation of emergency rules as provided in section 48 of the APA, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

### **Rule 1. Suspension of previous rules.**

These emergency rules supersede the entirety of the emergency rules filed on May 24, 2021.

### **Rule 2. Scope, application, and adoption by reference.**

(1) These rules apply to all healthcare employers covered in the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, for SARS-CoV-2 coronavirus and COVID-19.

(2) The following federal Occupational Safety and Health Administration (OSHA) regulations are adopted by reference in these emergency rules:

(a) 29 CFR 1910, Subpart U, "COVID-19 Emergency Temporary Standard."

(b) 29 CFR 1910.502, "Healthcare," as amended June 10, 2021.

(c) 29 CFR 1910.504, "Mini Respiratory Protection Program," as amended June 10, 2021.

(d) 29 CFR 1910.505, "Severability," as amended June 10, 2021.

(e) 29 CFR 1910.509, "Incorporation by Reference," as amended June 10, 2021.

(3) The OSHA regulations adopted in these rules are available from the United States Department of Labor, Occupational Safety and Health Administration website, [www.osha.gov](http://www.osha.gov), at no charge, as of the time of adoption of these rules.

(4) The regulations adopted in these rules are available for inspection at the Department of Labor and Economic Opportunity, MIOSHA Standards and FOIA Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143.

(5) The regulations adopted in these rules may be obtained from the Department of Labor and Economic Opportunity, MIOSHA Standards and FOIA Section, 530 West Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143. Up to 5 copies of these standards may be obtained at no charge. For quantities greater than 5, the cost is 4 cents per page, plus \$20.00 for shipping and handling.

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

6/18/2021

Date



Susan Corbin  
Acting Director

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Labor and Economic Opportunity that circumstances creating an emergency have occurred and the public interest requires the promulgation of the above rules.

6/20/2021

Date



Honorable Gretchen Whitmer  
Governor

DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT  
ENVIRONMENTAL STEWARDSHIP DIVISION  
PANDEMIC PUBLIC HEALTH MEASURES IN MIGRANT AGRICULTURAL WORKER  
HOUSING  
EMERGENCY RULES  
CERTIFICATE OF NEED FOR EXTENSION OF EMERGENCY

We are continuing to make progress in keeping our families and communities safe, but our work is not done. The state of Michigan has seen the number of cases, hospitalizations, and deaths plummet for vaccinated individuals, while unvaccinated Michiganders remain vulnerable to the effects of COVID-19. From January to July of this year, unvaccinated Michiganders accounted for a staggering 98% of COVID cases, 95% of hospitalizations, and 96% of deaths. The emergence of the Delta variant and the milestone of over 20,000 COVID-19 deaths in Michigan show the seriousness of what we are all facing. While we encourage everyone eligible to get vaccinated, there are populations and portions of the state where more outreach and opportunities are needed, including the migrant and seasonal agricultural workers temporarily here working to harvest and process our crops. At this point in the growing season, there is much left to do, and therefore it is necessary to keep these additional safety provisions for licensed housing in place through the end of the year.

Pursuant to Section 48(1) of 1969 PA 306, as amended, MCL 24.248(1), I hereby certify that it is necessary to extend the effectiveness of the Department of Agriculture and Rural Development Emergency Rules Pandemic Public Health Measures in Migrant Agricultural Worker Housing, which were filed with the secretary of state on March 2, 2021, through the end of the year. Therefore, Pandemic Public Health Measures in Migrant Agricultural Worker Housing Emergency Rules shall remain effective until December 31, 2021.



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Gretchen Whitmer, Governor

8/27/2021

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Date

DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT  
ENVIRONMENTAL STEWARDSHIP DIVISION

**PANDEMIC PUBLIC HEALTH MEASURES IN MIGRANT AGRICULTURAL  
WORKER HOUSING  
EMERGENCY RULES**

Filed with the secretary of state on March 2, 2021

These rules take effect upon filing with the secretary of state and shall remain in effect for six months.

By authority conferred on the department of agriculture and rural development by section 12421 of the public health code, 1978 PA 368, MCL 333.12421, and Executive Reorganization Order No. 2017-3, MCL 333.26254.

These emergency rules are promulgated by the Michigan department of agriculture and rural development (MDARD) to respond to the COVID-19 pandemic, and to protect the health, safety, and welfare of migratory laborers and their families who occupy agricultural labor camps.

**FINDING OF EMERGENCY**

On March 10, 2020, the Michigan department of health and human services (MDHHS) identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, Governor Whitmer issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan.

To protect workers from COVID-19, Governor Whitmer issued numerous additional Executive Orders, including Executive Orders 2020-111 and 2020-137, focused specifically on protecting migrant and seasonal agricultural workers. These orders required those who provide housing for Michigan's migrant agricultural workers to implement plans to prevent exposure to the novel coronavirus that causes COVID-19, care for individuals with COVID-19, and prevent the spread of disease among their workers based on this directive. It was necessary to take proactive, preventive measures to create safer living conditions for migrant workers, and the department, working collaboratively with licensed camp operators, migrant and seasonal agricultural worker organizations, local health departments, and other state agencies worked throughout the growing season to implement these orders while they were in effect.

Additionally, on August 14, 2020, MDHHS Director Robert Gordon issued an Emergency Order under MCL 333.2253, titled Mandatory Testing, Preventative Measures, and Safe Housing for Agricultural Workers. This order, still in effect, requires a number of protective actions including testing.

The State of Michigan presently has a seven-day average of 84.8 cases per million people. Test positivity was 3.7% as of February 23, 2021. While metrics have recently decreased from all-time highs, the state remains over two and a half times higher than the mid-summer low, according to MDHHS. A high number of cases creates significant pressure on our emergency and hospital systems. An average of 102.4 daily hospital admissions was seen in Michigan in the last week, with individuals under the age of 60 accounting for 40% of all new admissions. There are fewer than 900 Michiganders currently hospitalized for COVID-19 and 4.1% of all available inpatient beds are occupied by patients who have COVID-19. The state death rate is 2.6 deaths per million people and there are approximately 185 weekly deaths in Michigan attributable to COVID-19.

Even where COVID-19 does not result in death, and where our emergency and hospital systems are not heavily burdened, the disease can cause great harm. Recent estimates suggest that one in ten persons who suffer from COVID-19 will experience long-term symptoms, referred to as “long COVID.” These symptoms, including fatigue, shortness of breath, joint pain, depression, and headache, can be disabling. They can last for months, and in some cases, arise unexpectedly in patients who had few or no symptoms of COVID-19 at the time of diagnosis. COVID-19 has also been shown to damage the heart and kidneys. Furthermore, minority groups in Michigan have experienced a higher proportion of “long COVID.” The best way to prevent these complications is to prevent transmission of COVID-19.

Part of the department’s duty under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, is to ensure that a camp and its proposed operation conforms or will conform to minimum standards of health. In addition, pursuant to section 12421 of the public health code, 1978 PA 368, MCL 333.12421, the department must “promulgate rules for the protection of the health, safety, and welfare of migratory laborers and their families who occupy agricultural labor camps,” including “necessary matters relating to their good health, safety, and welfare.” In light of the threat of COVID-19, camps must implement certain protocols to maintain such minimum standards of health.

COVID-19 can spread easily in settings where many people live in close proximity, such as the migrant housing camps that house thousands of migrant agricultural workers in Michigan each year. Migrant agricultural workers are an essential part of the workforce in Michigan, and securing their health and well-being helps ensure that Michigan’s food supply chain is not disrupted. Taking preventive measures will save lives and keep the state’s agricultural sector running smoothly and consistently. Those who provide housing for Michigan’s migrant agricultural workers must implement plans to help prevent exposure to the novel coronavirus that causes COVID-19, care for individuals with COVID-19, and help prevent the spread of disease among their workers. Proactive and preventive measures must be taken to create safer living conditions for migrant workers.

Following the standard notice-and-comment rulemaking would result in harm to the public health, welfare, and safety by preventing a timely response to this rapidly changing pandemic. Migrant workers will be arriving only weeks from now to begin preparations for planting, pruning, maintenance, and harvest of our earliest crops, including asparagus. It is imperative that



licensed housing providers have as much notice as possible about the requirements to have in place to protect workers during the 2021 season. To ensure that there is as much time as possible to have plans and procedures in place to protect migrant agricultural workers, it is necessary to promulgate emergency rules as provided for in section 48 of the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

### **Rule 1. Definitions.**

(1) Definitions used in part 124 of the public health code, 1978 PA 368, MCL 333.12401 to 333.12434, and the rules promulgated under that authority, R 325.3601 to R 325.3699, have the same meanings in these rules.

(2) As used in these rules:

(a) “COVID-19-suspected resident” includes a camp resident who has symptoms of COVID-19 (e.g., fever, cough, shortness of breath) but has not yet received a COVID-19 diagnostic or antigen test result.

(b) “COVID-19-confirmed resident” includes a camp resident who has received a positive result from a COVID-19 diagnostic or antigen test and has not subsequently discontinued transmission-based precautions based on a strategy outlined by the CDC. A description of the CDC recommendations for discontinuation of transmission-based precautions may be accessed at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-hospitalized-patients.html>.

### **Rule 2. Requirements of licensed camp operators.**

(1) As a condition of housing licensure and in order to conform to standards of health in light of the risks of the COVID-19 pandemic, all owners and operators of agricultural labor housing camps licensed by the Michigan department of agriculture and rural development under part 124 of the public health code, 1978 PA 368, MCL 333.12401 to 333.12434, must implement the following:

(a) Develop and ensure implementation of a COVID-19 preparedness and response plan, consistent with recommendations specific to housing in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration, at: <https://www.osha.gov/Publications/OSHA3990.pdf> and that includes the following:

(i) Identification of a camp supervisor to answer camp occupant questions about safety procedures used in the camp, availability of medical and testing support, and provision of isolation housing as needed.

(ii) A training component to provide each adult camp occupant the following information:

(A) Social distancing measures to reduce and prevent the spread of COVID-19.

(B) Proper wearing of personal protective equipment.

(C) Enhanced sanitation and prevention measures for camp occupants that include:

(I) Cleaning and sanitizing common use areas daily, including, but not limited to, central restrooms, laundry facilities, and communal kitchens.

(II) Provisions for providing cleaning products to occupants for self-contained living units with their own kitchen, bath, and sleeping quarters.

(III) Provisions for cleaning areas where individuals in isolation or quarantine are housed.

(IV) Provisions for separation of beds by at least 6 feet or more in all directions, installation of barriers between beds to shield occupants from aerosol transmission, or other control and prevention measures between beds as approved by the department.

(V) Provisions for cleaning contact areas of vehicles, machinery, equipment, and tools prior to each work shift and between users.

(b) Develop, maintain, and update as necessary a listing of names and emergency contact information for each camp resident with an indication if the housing provider also employs that individual.

(c) Establish a posting location in each camp that is easily accessible to camp occupants for the provision of information relative to COVID-19 mitigation.

### **Rule 3. Posting of information.**

(1) As a condition of housing licensure and in order to conform to standards of health in light of the risks of the COVID-19 pandemic, all owners and operators of agricultural labor housing camps must post information at the location required in Rule 2 that includes all of the following:

- (a) Camp name and street address for location by 911 and other emergency services.
- (b) Name and phone number of the current camp supervisor.
- (c) Phone number for the local health department.
- (d) Phone number for the Michigan COVID-19 hotline, 888-535-6136.
- (e) Information on health clinics within 10 miles of the camp, and state established medical, isolation, and quarantine facilities established for coronavirus response.
- (f) Information on the location of additional sanitation and PPE supplies.
- (g) A copy of the current license issued by the department for the housing.

(2) The information in subrule (1)(a) to (f) of this rule must be printed in English, Spanish, and if 5% or more of camp occupants speak another language, that language.

### **Rule 4. Suspected or confirmed cases.**

(1) As a condition of housing licensure and in order to conform to standards of health in light of the risks of the COVID-19 pandemic, licensed camp operators must:

(a) Report the name, address, living unit label, and pertinent contact information for any COVID-19 suspected or confirmed individual in licensed housing to the local health department as soon as practical but in no event later than 24 hours of receiving notice about the suspected or confirmed case of COVID-19.

(b) Arrange for COVID-19-suspected and COVID-19-confirmed residents to be evaluated by a healthcare provider through the county local health department or a federally qualified health center. Initial contact with the local health department or the federally qualified health center must occur as soon as practical but in no event later than 24 hours of receiving notice about the suspected or confirmed case of COVID-19.

(c) Provide isolation housing for COVID-19-confirmed residents approved by either the department or the local health department, unless the COVID-19-confirmed resident resides where they can effectively isolate themselves. COVID-19-confirmed residents must have access to bathroom facilities used only by COVID-19-confirmed residents. Food and water must be delivered, and dedicated cooking facilities may be provided.

(d) Provide quarantine housing approved by either the department or the local health department for COVID-19-suspected residents and individuals who were exposed to a confirmed COVID-19

positive individual. Quarantined individuals must have access to bathroom facilities used only by COVID-19-suspected residents and individuals who were exposed to a confirmed COVID-19 positive individual. Food and water must be delivered, and dedicated cooking facilities may be provided.

(e) Post notice at the entrance to the isolation and quarantine areas that anyone entering must wear proper PPE, including a facemask and gloves, and wash their hands thoroughly immediately after departure.

**Rule 5. Applicability.**

(1) Camps that have been licensed for calendar year 2021 have 30 days from the effective date of these rules to comply with the provisions of these rules.

(2) The department may grant an exemption from a provision of these rules if there is clear and convincing evidence that the alternative to the rule complies with the intent of the emergency rule from which exemption is sought.

(3) Nothing in this section shall be construed to permit owners or operators of employer-provided migrant housing camps to deny access to any person on the basis that the camp is a worksite.



March 1, 2021

\_\_\_\_\_  
Gary McDowell, Director, Department of  
Agriculture and Rural Development

\_\_\_\_\_  
Date

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Michigan Department of Agriculture & Rural Development that the circumstances creating an emergency have occurred and the promulgation of the above rules is required for the preservation of the public health, safety, and welfare.



2/25/2021

\_\_\_\_\_  
Gretchen Whitmer, Governor

\_\_\_\_\_  
Date